

REMARKS:

Please cancel claims 39, 43, and 47, as indicated in the above listing of claims, without prejudice. Claims 1-36 have previously been cancelled. Claims 37, 38, 40-42, 44-46, and 48-51 are pending in the present Application.

The Office Action indicates that claims 37-51 stand rejected under 35 U.S.C. § 103(a) over Aspen Technology's suite of Enterprise Optimization system and method for Manufacturing as described in:

- I. Hydrocarbon Processing's Advanced Control and Information Systems (Sept. 1999), hereinafter Reference A.
- II. Banker et al., "AspenTech Expands Oil & Gas Solution" (Jun. 2000), hereinafter Reference B.
- III. "Aspen Announces Availability of eSupply Chain Suite to Optimize Flow of Knowledge and Materials for Process Manufacturing Industries" (Aug. 2000), hereinafter Reference C.
- IV. Aspen Technology's e-Business Solution Lets Petroleum Companies Manage Consumer Demand, Fulfillment in Real-Time (Nov. 2000), hereinafter Reference D.
- V. AspenTech.com Web Pages (Jun. – Dec. 2000), hereinafter Reference E.

Since claims 39, 43, and 47 have been cancelled, the rejection of these claims is considered moot.

By this Amendment, claims 37, 41, and 45 have been amended in order to more particularly point out and distinctly claim the invention. Claims 40, 44, and 48 have been amended in order to provide for improved consistency with amended claims 37, 41, and 45, from which they respectively depend. Applicants reserve the right to pursue broader claims in this or another application.

REJECTIONS UNDER 35 U.S.C. § 103:

Claims 37, 38, 40-42, 44-46, and 48-51 stand rejected under 35 U.S.C. § 103(a) over Aspen Technology's suite of Enterprise Optimization system and method for Manufacturing as described in references A through E.

For example, claim 37 as presently amended recites in part:

A computer-implemented system...operable to:
store...intermediate product information representative of an amount per time period of an intermediate product that can be produced and intermediate product demand **information representative of a predicted future demand for the intermediate product;**
determine, based on the end product demand information, a demand quantity of the end product that a manufacturer is to produce during a specified time period to satisfy the predicted future demand...
determine, based on the intermediate product information and the demand quantity, **a second intermediate-product quantity of the intermediate product that the manufacturer can produce during the specified time period in addition to the first intermediate-product quantity**, wherein production of the second-intermediate-product quantity requires producing a second by-product quantity;
determine, based on the second intermediate-product quantity and the intermediate product demand information, whether to produce any of the second intermediate-product quantity of the intermediate product....

References A through E fail to disclose or suggest all of the limitations of claim 37, including the specific limitations reproduced above. For example, References A through E fail to disclose or suggest storing "information representative of a predicted future demand for the intermediate product." References A through E also fail to disclose or suggest determining "a second intermediate-product quantity of the intermediate product that the manufacturer can produce during the specified time period" and determining "based on the second intermediate-product quantity and the intermediate product demand information, whether to produce any of the second intermediate-product quantity of the intermediate product."

While some of references A through E make rather cursory mention of intermediate products, none of these references teach or suggest the specific limitations pointed out above.

In light of the above, it is respectfully submitted that claim 37, and claims 38, 40, and 49 depending from claim 37, are in condition for allowance, and notice to that effect is respectfully requested.

Claims 41 and 45, as amended, each include limitations similar to the limitations of claim 37 discussed above. Therefore, the discussion above in connection with claim 37 applies equally to claims 41 and 45.

For the reasons set forth herein, the Applicant respectfully submits that claims 37, 38, 40-42, 44-46, and 48-51 are not rendered obvious by References A through E. The Applicant further submits that claims 37, 38, 40-42, 44-46, and 48-51 are in condition for allowance. Therefore, the Applicant respectfully requests claims 37, 38, 40-42, 44-46, and 48-51 be allowed.

The Legal Standard for Obviousness Rejections Under 35 U.S.C. § 103:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991); M.P.E.P. § 2142. Moreover, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); M.P.E.P. § 2143.03.

With respect to alleged obviousness, there must be something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination. *Panduit Corp. v. Dennison Mfg. Co.*, 810 F.2d 1561 (Fed. Cir. 1986). In fact, the absence of a suggestion to combine is dispositive in an obviousness determination. *Gambro Lundia AB v. Baxter Healthcare Corp.*, 110 F.3d 1573 (Fed. Cir. 1997). The mere fact that the prior art can be combined or modified does not make the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990); M.P.E.P. § 2143.01. The consistent criterion for determining obviousness is whether the prior art would have suggested to one of ordinary skill in the art that the process should be carried out and would have a reasonable likelihood of success, viewed in the light of the prior art. Both the suggestion and the expectation of success must be founded in the prior art, not in the Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991; *In re O'Farrell*, 853 F.2d 894 (Fed. Cir. 1988); M.P.E.P. § 2142.

A recent Federal Circuit case makes it clear that, in an obviousness situation, the prior art must disclose each and every element of the claimed invention, and that any motivation to combine or modify the prior art must be based upon a suggestion in the prior art. *In re Lee*, 61 U.S.P.Q.2d 1430 (Fed. Cir. 2002). Conclusory statements regarding common knowledge and common sense are insufficient to support a finding of obviousness. *Id.* at 1434-35.

CONCLUSION:


In view of the foregoing amendments and remarks, this application is considered to be in condition for allowance, and early reconsideration and a Notice of Allowance are earnestly solicited.

The undersigned hereby authorizes the Director to charge any fees that may be required, or credit any overpayments, to **Deposit Account No. 500777**. If an extension of time is necessary for allowing the Amendment to be timely filed, this document is to be construed as also constituting a Petition for Extension of Time Under 37 C.F.R. § 1.136(a) to the extent necessary. Any fee required for such Petition for Extension of Time should be charged to **Deposit Account No. 500777**.

Please link this application to Customer No. 53184 so that its status may be checked via the PAIR System.

Respectfully submitted,

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Date


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